

**CERTIFIED LIST OF ITEMS IN THE RECORD**  
**CITY OF ABILENE, TEXAS, et al. v. FCC & USA, No. 97-1633**

10/01/97	FCC Memorandum Opinion and Order, 97-346, <u>In the Matter of the Public Utility Commission of Texas, (CCBPol 96-13), The Competition Policy Institute, et al., (CCBPol 96-14), Teleport Communications Group, (CCBPol 96-16) and City of Abilene, Texas, (CCBPol 96-19), FCC 97-346</u>
09/10/97	Letter from Albert M. Lewis, Directorate Senior Attorney, Federal Government Affairs, AT&T to A. Richard Metzger, Jr., Deputy Chief Common Carrier Bureau, FCC (Ex Parte)
08/14/97	Letter from Albert M. Lewis to William F. Caton (CCBPol 96-14) (Ex Parte)
08/05/97	ICG Telecom Group, Inc.'s Withdrawal of Petition for Declaratory Ruling (CCBPol 96-14)
08/04/97	Letter from Albert M. Lewis to William F. Caton regarding Ex Parte (CCBPol 96-14)
07/28/97	Letter from Todd F. Silbergeld, Director Federal Regulatory to William F. Caton (CCBPol 96-14) (Ex Parte)
07/28/97	Letter from Betsy J. Brady on behalf of AT&T to William F. Caton (CCBPol 96-14) (Ex Parte)
07/25/97	Letter from Betsy J. Brady to William F. Caton (CCBPol 96-14) (Ex Parte)
07/23/97	Letter from Betsy J. Brady to William F. Caton (CCBPol 96-14) (Ex Parte)
07/17/97	Letter from Albert H. Kramer, counsel for ICG ("ICG") Communications, Inc. to William F. Caton (CCBPol 96-14) (Ex Parte)
07/17/97	Letter from Matthew C. Ames, counsel for Chattanooga Electric Power Board to William F. Caton (CCBPol 96-14) (Ex Parte)
07/16/97	Letter from Matthew C. Ames to William F. Caton (CCBPol 96-14) (Ex Parte)
07/16/97	Letter from Albert H. Kramer to William F. Caton (CCBPol 96-14) (Ex Parte)
07/09/97	Letter from Betty Ann Kane, counsel for Chattanooga Electric Power Board to William F. Caton. (CCBPol 96-14) (Ex Parte)

07/03/97 Letter from Betsy J. Brady to William F. Caton (CCBPol 96-14) (Ex Parte)

06/27/97 Letter from William Malone, counsel for the City of Laredo, Texas to William F. Caton (CCBPol 96-14) (Ex Parte)

06/11/97 Letter from James Baller, counsel for Missouri Association of Municipal Utilities to William F. Caton (CCBPol 96-14) (Ex Parte)

06/02/97 Letter from James Baller to William F. Caton (CCBPol 96-14) (Ex Parte)

05/13/97 Letter from Leonard S. Sawicki to William F. Caton (CCBPol 96-14) (Ex Parte)

11/18/96 Letter from Martin E. Grambow, Vice President and General Counsel, SBC Telecommunications, Inc., ("SBC") to William F. Caton (CCBPol 96-14)

11/13/96 Letter from Leonard S. Sawicki to William F. Caton, Acting Secretary (Ex Parte) (CCBPol 96-14)

11/12/96 Letter from Martin E. Grambow to William F. Caton regarding July 3, 1996 comments filed by U.S. Department of Justice withdrawing SBC's request for confidential treatment (CCBPol 96-14)

11/12/96 Public Utility Commission of Texas Arbitration Award (CCBPol 96-14)

10/22/96 Reply Comments of City of Abilene, Texas ("City of Abilene") (CCBPol 96-19) (Original)

10/21/96 Reply Comments of the American Public Power Association ("APPA") in Support of the Petition of Abilene, Texas for Expedited Declaratory Ruling (CCBPol 96-19)

10/21/96 Reply Comments of Cities of Garland and Lubbock, Texas in Support of Petition of City of Abilene for Expedited Declaratory Ruling (CCBPol 96-19)

10/21/96 Reply Comments of City of Abilene (CCBPol 96-19) (Fax Copy)

10/21/96 Reply Comments of ICG (CCBPol 96-19)

10/21/96 Reply Comments of Southwestern Bell Telephone Company (CCBPol 96-19)

10/11/96 Comments of APPA in Support of the Petition of City of Abilene for Expedited Declaratory Ruling (CCBPol 96-19)

10/11/96 Comments of the State of Texas on the Petition of City of Abilene (CCBPol 96-19)

10/11/96	Comments of ICG (CCBPol 96-19)
10/11/96	Comments of the City of Garland, Texas in Support of Petition of City of Abilene for Expedited Declaratory Ruling (CCBPol 96-19)
10/11/96	Comments of UTC (CCBPol 96-19)
10/11/96	Comments of SWBT (CCBPol 96-19)
10/04/96	Letter from Leonard S. Sawicki to William F. Caton (CCBPol 96-14)
10/03/96	Letter from Todd F. Silbergeld to William F. Caton (CCBPol 96-16)
09/11/96	<u>Public Notice, Pleading Cycle Established for Comments on Petition of Abilene, Texas for Expedited Declaratory Ruling</u> , CCBPol 96-19, 11 Rcd 10633 (1996)
08/27/96	Reply Comments of Keller and Heckman, L.L.P. (CCBPol 96-16)
08/27/96	Reply Comments of SWBT
08/27/96	Reply Comments of Teleport Communications Group, Inc.
08/15/96	Response of SWBT to ICG's Motion for Leave to Supplement the Record (CCBPol 96-14)
08/15/96	Petition of City of Abilene for Expedited Declaratory Ruling
08/12/96	Comments of SWBT (CCBPol 96-16)
08/12/96	Comments of Keller and Heckman, L.L.P. (CCBPol 96-16)
08/12/96	Comments of Sprint Corporation (CCBPol 96-16)
08/12/96	Comments of the Public Utility Commission of Texas (CCBPol 96-16)
08/12/96	Comments of MCI (CCBPol 96-16)
08/06/96	Intel Group (U.S.A.), Inc. and ICG Telecom Group, Inc. Motion for Leave to Supplement the Record (CCBPol 96-14)
07/19/96	Reply Comments of Competition Policy Institute (CCBPol 96-14)
07/18/96	Reply Comments of SWBT ( <b>CONFIDENTIAL-FILED UNDER SEAL</b> ) (CCBPol 96-14)

07/18/96 Reply Comments of the APPA (CCBPol 96-14)

07/18/96 Reply Comments of the Public Utility Commission of Texas (CCBPol 96-14)

07/18/96 AT&T's Reply Comments on Petitions for Declaratory Rulings Regarding Preemption of Texas Law (CCBPol 96-14)

07/18/96 Reply of Sprint Corporation (CCBPol 96-14)

07/18/96 Reply Comments of Texas Telephone Association (CCBPol 96-14)

07/18/96 Reply Comments of SWBT (**PUBLIC VERSION-REDACTED**) (CCBPol 96-14)

07/18/96 Reply Comments of UTC (CCBPol 96-14)

07/18/96 Reply Comments of the Texas Cable & Telecommunications Association ("TCTA") on Petitions for Declaratory Ruling (CCBPol 96-14)

07/18/96 Reply Comments of the Telecommunications Resellers Association (CCBPol 96-14)

07/18/96 Reply Comments of the National Telecommunications and Information Administration ("NTIA") (CCBPol 96-14)

07/18/96 Reply Comments of MFS Communications Company, Inc. (CCBPol 96-14)

07/18/96 Response Comments of the Cities of LaGrange, Texas; Brenham, Texas; Georgetown, Texas; and Fredericksburg, Texas (CCBPol 96-14)

07/18/96 Reply Comments of the City of Laredo, Texas (CCBPol 96-14)

07/18/96 Reply Comments of GTE Service Corporation (CCBPol 96-14)

07/18/96 Reply Comments of MCI (CCBPol 96-14)

07/18/96 Reply of Petitioners Intelcom Group (U.S.A.), and ICG (CCBPol 96-14)

07/17/96 Reply Comments of the Texas Office of Public Utility Counsel (CCBPol 96-14)

07/12/96 Public Notice, Pleading Cycle Established for Comments on Teleport Communications Group, Inc.'s Petition for Expedited Declaratory Ruling. CCBPol 96-16, 11 FCC Rcd 8126 (1996)

07/08/96 Letter from John Windhausen, General Counsel, CPI to William F. Caton

(CCBPol 96-14)

07/05/96	Request of SBC Communications, Inc. for Confidential Treatment, CCBPol 96-14, DA 96-888
07/03/96	Comments of Excel Telecommunications, Inc. (CCBPol 96-14)
07/03/96	Comments of John Staurulakis, Inc. Valley Telephone Cooperative, Inc., and Central Texas Telephone Cooperative, Inc. (CCBPol 96-14)
07/03/96	Comments of the General Services Administration and the United States Department of Defense (CCBPol 96-14)
07/03/96	Comments of Sprint Corporation (CCBPol 96-14)
07/03/96	Comments of the Consumers' Utility Counsel Division, Georgia Office of Consumer Affairs (CCBPol 96-14)
07/03/96	Comments of GTE Service Corporation (CCBPol 96-14)
07/03/96	Comments of American Petroleum Institute (CCBPol 96-14)
07/03/96	Comments of Competition Policy Institute (CCBPol 96-14)
07/03/96	Comments of APPA (CCBPol 96-14)
07/03/96	Comments of the Public Utility Commission of Texas on the Petitions of MCI, AT&T, MFS, and CPI (CCBPol 96-14)
07/03/96	Comments of the Association for Local Telecommunications Services (CCBPol 96-14)
07/03/96	Comments of AT&T on Petitions for Declaratory Rulings Regarding Preemption of Texas Law (CCBPol 96-14)
07/03/96	Comments of Competitive Telecommunications Association in Support of Petitions for Declaratory Ruling (CCBPol 96-14)
07/03/96	Comments of the Cities of La Grange, Texas; Brenham, Texas; Georgetown Texas; and Fredericksburg, Texas (CCBPol 96-14)
07/03/96	Comments of Teleport Communications Group Inc. (CCBPol 96-14)
07/03/96	Comments of Texas Telephone Association (CCBPol 96-14)
07/03/96	Comments of the Texas Office of the Public Utility Counsel (CCBPol 96-14)

07/03/96	Comments of the United States Department of Justice (CCBPol 96-14)
07/03/96	Comments of UTC (CCBPol 96-14)
07/03/96	Comments of State of Texas of the Petition of ICG (CCBPol 96-14)
07/03/96	Comments of SWBT (CCBPol 96-14)
07/03/96	Comments of the Telecommunications Resellers Association (CCBPol 96-14)
07/03/96	Comments of the Texas Association of Telecommunications Officers and Advisors (CCBPol 96-14)
07/03/96	Comments of the TCTA (CCBPol 96-14)
07/01/96	Letter from Martin E. Grambow to William F. Caton regarding Request for Confidential Treatment of SBC Documents (CCBPol 96-14)
06/28/96	Petition of Teleport Communications Group Inc. for Expedited Declaratory Ruling
06/04/96	<u>Public Notice: Pleading Cycle for Comments on Petitions for Preemption of Local Entry Barriers Pursuant to Section 253</u> , CCBPol 96-14, 11 FCC Rcd 6578 (1996)
05/28/96	MFS Communications Company, Inc.'s Petition for Preemption, Declaratory Ruling and Injunctive Relief
05/22/96	Petition of MCI for Expedited Declaratory Ruling Preempting Texas Law (CCBPol 96-13)
05/21/96	AT&T's Petition for Expedited Declaratory Ruling Preempting Texas Law (CCBPol 96-13)
05/21/96	Petition of Intelcom Group (U.S.A.), Inc. and ICG for Expedited Declaratory Ruling and Consolidation (CCB Pol 96-13)
05/20/96	Petition of the Competition Policy Institute for Preemption (CCBPol 96-13)
05/15/96	<u>Public Notice, Pleading Cycle Established for Comments of the Public Utility Commission of Texas for Expedited Declaratory Ruling Pursuant to Section 253</u> , CCBPol 96-13 11 FCC Rcd 13828 (1996)
05/10/96	Petition of Public Utility Commission of Texas for Expedited Declaratory Ruling (CCBPol 96-13)

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CITY OF ABILENE, TEXAS, et al.,  
Petitioners.

v.

No. 97-1633 (and  
consolidated case)

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA.  
Respondents.

**CERTIFICATE OF MAGALIE ROMAN SALAS, SECRETARY  
FEDERAL COMMUNICATIONS COMMISSION**

I, Magalie Roman Salas, Secretary, Federal Communications Commission, do hereby  
certify that the preceding list is a true and correct Certified List of Items in the Record  
comprising a record of the proceedings before the Federal Communications Commission  
considered pertinent to the above-captioned consolidated cases.

Witness my hand and Seal of the Federal Communications Commission this 11th day  
of December, 1997.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

## **ATTACHMENT L**



IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

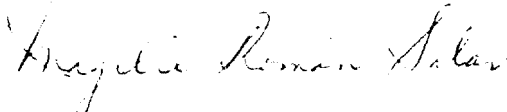
THE CITY OF ABILENE, TEXAS, <u>et al.</u> ,	)	
Petitioners,	)	
	)	
v.	)	No. 97-1633 (and
	)	(consolidated case)
FEDERAL COMMUNICATIONS COMMISSION	)	
and UNITED STATES OF AMERICA,	)	
Respondents.	)	

CERTIFICATE OF MAGALIE ROMAN SALAS, SECRETARY  
FEDERAL COMMUNICATIONS COMMISSION

I, Magalie Roman Salas, Secretary, Federal Communications Commission, do hereby certify that the preceding supplemental list is a true and correct addition to the Certified List of Items comprising a record of the proceedings before the Federal Communications Commission considered pertinent to the above-captioned consolidated cases.

Witness my hand and Seal of the Federal Communications Commission this 7th day of May, 1998.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

**SUPPLEMENTAL CERTIFIED LIST OF ITEMS IN THE RECORD**  
**The City of Abilene, Texas, et al. v. FCC & USA, Nos. 97-1633, et al.**

- 09/09/97 Letter from Senator J. Robert Kerrey to Reed E. Hundt, Chairman, Federal Communications Commission (regarding implementation of section 253(e) of the Telecommunications Act of 1996)
- 09/09/96 Letter from Chairman Reed E. Hundt to Congressman Dan Schaefer (responding to his letter of August 5, 1996)
- 08/05/96 Letter from Congressman Dan Schaefer to Chairman Reed E. Hundt (regarding implementation of section 253(e) of the Telecommunications Act of 1996)

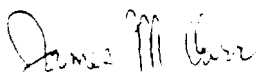
IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT


THE CITY OF ABILENE, TEXAS, <u>et al.</u>	)	
Petitioners,	)	
	)	
	)	No. 97-1633 (and
	)	(consolidated case)
FEDERAL COMMUNICATIONS COMMISSION	)	
and UNITED STATES OF AMERICA,	)	
Respondents.	)	

SUPPLEMENTAL CERTIFIED LIST OF ITEMS IN THE RECORD

The Federal Communications Commission herewith files a supplemental certified list of items constituting the record of Commission proceedings in the above-captioned consolidated cases. The filing consists of (1) a supplemental list of three additional items that are part of the record and (2) a certificate of the Commission's Secretary.

Respectfully submitted,

  
Christopher J. Wright  
General Counsel

  
James M. Carr  
Counsel

Federal Communications Commission  
Washington, D.C. 20554  
(202) 418-1740

May 7, 1998

## **ATTACHMENT M**

J. ROBERT KERREY  
NEBRASKA

## United States Senate

WASHINGTON, DC 20510-2704

September 9, 1997

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Mr. Chairman: *Reed,*

Anti-competitive laws passed by state and local governments pose a real threat to the development of competition in local telecommunications markets. In the wake of the Telecommunications Act, several states have passed legislation that prohibits or significantly impairs the ability of publicly-owned utilities to provide telecommunications services themselves or to make their facilities available to other potential providers of telecommunications services. I am concerned that these actions are significantly delaying consumers ability to exercise their economic power by choosing between local telecommunications carriers.

Congress created Section 253 of the Telecommunications Act to address this problem by granting the Federal Communications Commission (FCC) authority to preempt state and local legal requirements that pose a barrier to entry into telecommunications by "any entity". The law makes no distinction among types of entities or forms of ownership. Section 253 states, "No state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service". In using the term "any entity", Congress intended to give entities of all kinds, including publicly-owned utilities, the opportunity to enter these markets.

I understand that preemption proceedings are pending before the FCC concerning a Texas law that explicitly bars municipalities and municipal utilities from participating directly or indirectly in the provision of telecommunications services. The FCC should issue a prompt and decisive decision about this case that makes it clear that this law and others like it will not stand contrary to the wishes of Congress. I encourage the Commission to act on these proceedings without further delay.

Thank you for your careful consideration of my concerns.

Sincerely,



J. Robert Kerrey

## **ATTACHMENT N**

# *Missouri Revised Statutes*

## **Chapter 392**

### **Telephone and Telegraph Companies**

#### **Section 392.410**

August 28, 1997

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**Certificate of public convenience and necessity required, exception--  
certificate of interexchange service authority, required when--  
duration of certificates--temporary certificates, issued when-- political  
subdivisions restricted from providing certain telecommunications  
services or facilities, expiration date.**

392.410. 1. A telecommunications company not possessing a certificate of public convenience and necessity from the commission at the time this section goes into effect shall have not more than ninety days in which to apply for a certificate of service authority from the commission pursuant to this chapter unless a company holds a state charter issued in or prior to the year 1913 which charter authorizes a company to engage in the telephone business. No telecommunications company not exempt from this subsection shall transact any business in this state until it shall have obtained a certificate of service authority from the commission pursuant to the provisions of this chapter, except that any telecommunications company which is providing telecommunications service on September 28, 1987, and which has not been granted or denied a certificate of public convenience and necessity prior to September 28, 1987, may continue to provide that service exempt from all other requirements of this chapter until a certificate of service authority is granted or denied by the commission so long as the telecommunications company applies for a certificate of service authority within ninety days from September 28, 1987.

2. No telecommunications company offering or providing, or seeking to offer or provide, any interexchange telecommunications service shall do so until it has applied for and received a certificate of interexchange service authority pursuant to the provisions of subsection 1 of this section. No telecommunications company offering or providing, or seeking to offer or provide, any local exchange telecommunications service shall do so until it has applied for and received a certificate of local exchange service authority pursuant to the provisions of section 392.420.

3. No certificate of service authority issued by the commission shall be construed as granting a monopoly or exclusive privilege, immunity or franchise. The issuance of a certificate of service authority to any telecommunications company shall not preclude the commission from issuing additional certificates of service authority to another telecommunications company providing the same or equivalent service or serving the same geographical area or customers as any previously certified company, except to the extent otherwise provided by section 392.450.
4. Any certificate of public convenience and necessity granted by the commission to a telecommunications company prior to September 28, 1987, shall remain in full force and effect unless modified by the commission, and such companies need not apply for a certificate of service authority in order to continue offering or providing service to the extent authorized in such certificate of public convenience and necessity. Any such carrier, however, prior to substantially altering the nature or scope of services provided under a certificate of public convenience and necessity, or adding or expanding services beyond the authority contained in such certificate, shall apply for a certificate of service authority for such alterations or additions pursuant to the provisions of this section.
5. The commission may review and modify the terms of any certificate of public convenience and necessity issued to a telecommunications company prior to September 28, 1987, in order to ensure its conformity with the requirements and policies of this chapter. Any certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected. Unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority or a certificate of public convenience and necessity shall be null and void.
6. The commission may issue a temporary certificate which shall remain in force not to exceed one year to assure maintenance of adequate service or to serve particular customers, without notice and hearing, pending the determination of an application for a certificate.
7. No political subdivision of this state shall provide or offer for sale, either to the public or to a telecommunications provider, a telecommunications service or telecommunications facility used to provide a telecommunications service for which a certificate of service authority is required pursuant to this section. Nothing in this subsection shall be construed to restrict a political subdivision from allowing the nondiscriminatory use of its rights-of-way including its poles, conduits, ducts and similar support structures by telecommunications providers or from providing telecommunications services or facilities:

- (1) For its own use;



- (2) For 911, E-911 or other emergency services;
- (3) For medical or educational purposes;
- (4) To students by an educational institution; or
- (5) Internet-type services. The provisions of this subsection shall expire on August 28, 2002\*.

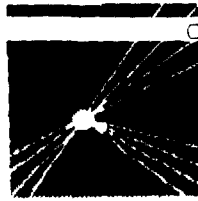
(L. 1987 H.B. 360, A.L. 1996 S.B. 507, A.L. 1997 H.B. 620)

\*Subsection 7 of this section expires 8-28-2002.



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## **ATTACHMENT O**



## Missouri Telecommunications Coalition

May 5, 1998

Springfield Area Chamber of Commerce  
PO Box 1687  
202 S. John Q. Hammons Parkway  
Springfield, MO 65801

To the Executive Director of the Springfield Area Chamber of Commerce:

This is to advise you that in the very near future, your Chamber of Commerce may be asked to support the entrance of Southwestern Bell into long distance telephone markets. They are expected to file a petition with the Missouri Public Service Commission (PSC) within the next few weeks asking for PSC approval to do so.

We urge your Chamber to withhold your support of this applications (known in the industry as a "271 Application"). It is not in the best interests of small business or of consumers. Here's why:

1. Excess profits and inefficiencies are embedded in local rates. They can only be driven out through competition. Local competition can only take place if Southwestern Bell complies with federal law, which demands that they open up their local markets first. That's what "271" is all about.
2. If local companies get into long distance before there is effective competition for local service, there is absolutely no incentive for them to compete on price in either local or long distance service.
3. If Southwestern Bell gets into long distance before there is effective local competition, it will hit consumers where it hurts – the pocketbook. A report by the Consumer Federation of America estimates that consumers would lose as much as \$10 billion per year in savings from lower phone bills. This is because without local competition, Southwestern Bell would be the only telecommunications company that could offer a seamless local and long distance package of services.

3. There is only one reason why consumers are not benefiting from a competitive local market – the local monopolies refuse to comply with federal law. Although they say they want to promote local competition, behind the scenes they are filing lawsuits, delaying regulatory action and doing all that they can to hold on to their monopoly. On top of this, they want to have their cake and eat it too, by pushing to get into long distance markets before there is effective local competition.

Competition is what makes American businesses work. It has certainly worked in the long distance arena where rates have gone down 64% since the advent of competition.

We urge you to support local telephone competition first! If you are asked to take any action in support of the anticipated 271 Application before the PSC, just say no. It's the best thing you can do to bring competition and free enterprise into the local telephone market.

Sincerely,

*The Missouri Telecommunications Coalition*

AT&T

MCI

CompTel

Birch Telecom

World Com

Kansas City Fiber Net

Brooks Fiber Properties

Missouri Cable Telecommunications Association

## **ATTACHMENT P**

## ARTICLE 6, § 19(a)

## ARTICLE 6, § 19(a)

## ARTICLE 6, § 19(a)

Note 1

**City of St. Louis laws**  
is right to regulate and  
se of its streets, but such  
in conflict with general  
of St. Louis v. Stenson  
1529.

1919, § 7191 et seq.  
182.150, 182.160  
was not inapplicable to  
ict with charter powers.  
er v. St. Louis (1887) 2  
870.

, art. 1, § 1, cl. 13, and  
invalid as conflicting with  
the public service com-  
United Rys. Co. of St.  
Commission of Missouri  
270 Mo. 429

i participated in proceed-  
of levee district including  
constitutional charter city  
fore organization and in-  
prive court of jurisdiction  
g decree, particularly in  
ions retaining existing or-  
Feeney (Sup.1964) 374

R.S.1909, §§ 9752, 9753  
82.230, if rendering  
391.240) inapplicable to  
ed by plaintiff, were con-  
raised a constitutional  
me court's determination.  
& A. Ry. Co. (1915) 178  
2.

will take judicial notice of  
s City. Donovan v. Kansas  
2d 874, 352 Mo. 430, modi-  
s 179 S.W.2d 108, 352 Mo.  
d 64 S.Ct. 1049, 322 U.S.  
; Fleshner v. Kansas City  
06, 348 Mo. 978.

an take judicial notice of  
sas City home rule charter.  
Police Com'rs (Sup.1984)  
ertiorari denied 105 S.Ct.  
87 L.Ed.2d 657.

judicial notice of the home  
of Hazelwood adopted pur-  
and state statutes if plead-  
where found in session acts  
atutes. Schmitt v. City of  
72) 487 S.W.2d 882.

ould take judicial notice of  
is City home rule charter.  
v. Davis (Sup.1967) 418

39. Burden of proof

Party attempting to prove that ordinance is  
cague near burden of proof to show by clear  
and satisfactory evidence that ordinance is un-  
reasonable or unlawful. Temple Bldg. v. Build-  
ing Code Bd. of Appeals of City of Kansas City  
App.1978) 567 S.W.2d 406

Owners of building failed to sustain their bur-  
den of bringing forth clear and satisfactory evi-  
dence to show vagueness of city ordinance by  
which city building code board of appeals or-  
dered owners to equip passenger elevators in  
building with interlock system. Temple Bldg. v.

Building Code Bd. of Appeals of City of Kansas  
City (App.1978) 567 S.W.2d 406.

### 40. Review

The public necessity of construction of sew-  
ers, the inclusion of properties in sewer district,  
and the benefits to the included properties were  
legislative questions of fact to be determined by  
council of constitutional charter city, and, the  
questions having been determined, the council's  
determination was conclusive, absent fraud or  
oppression, and not subject to review by the  
courts. Giers Imp. Corp. v. Investment Service  
(1951) 235 S.W.2d 355, 361 Mo. 504.

### § 19(a). Power of charter cities, how limited

Any city which adopts or has adopted a charter for its own government, shall  
have all powers which the general assembly of the state of Missouri has  
authority to confer upon any city, provided such powers are consistent with the  
constitution of this state and are not limited or denied either by the charter so  
adopted or by statute. Such a city shall, in addition to its home rule powers,  
have all powers conferred by law.

(Adopted at special election Oct. 5, 1971.)

### Historical Notes

Adoption of this section was proposed by special election or the November 1972, general  
1971, H.J.R. No. 34 to be voted upon at a election.

### Law Review Commentaries

Municipal home rule charters in Missouri.  
Michael K. Euston and Steven B. Johnson, 30 J.  
of Mo. Bar 281 (1974).

### Notes of Decisions

**In general** 1  
**Annexation of land** 2  
**Condemnation** 3  
**Contracts** 4  
**Liquor licenses** 5  
**Ordinance violations** 6  
**Retirement** 7  
**Review** 10  
**Schools and school districts** 8  
**Zoning** 9

#### 1. In general

Proposal to transfer former city hospital to  
redevelopment corporation and to redevelop fa-  
cility for use as a homeless shelter was not  
proper subject for initiative petition, in view of  
provision of urban redevelopment corporations  
law mandating public hearing before redevelop-  
ment rights or powers may be granted. Rice v.  
Stoff, 1992, 844 S.W.2d 529, certiorari denied  
113 S.Ct. 3040, 125 L.Ed.2d 726.

Ordinance of City of St. Louis transferring all  
responsibilities for collection of municipal taxes,  
fees and disbursement of taxes and fees collect-  
ed from license collector to comptroller for City  
of St. Louis was superseded by state statutes  
giving license collector exclusive authority to  
issue municipal licenses and collect municipal  
license taxes. City of St. Louis v. Doss (Sup.  
1991) 807 S.W.2d 61.

General grant of power by this constitutional  
provision giving home rule charter city all pow-  
ers of general assembly of state is conditioned  
or restricted to extent that power is limited or  
denied by charter. Yellow Freight Systems,  
Inc. v. Mayor's Com'n on Human Rights of City  
of Springfield (Sup.1990) 791 S.W.2d 382.

Power conferred upon a constitutional char-  
ter city by virtue of Const. Art. 6, § 19(a) re-  
garding power of charter cities is subject to  
whatever limitations are imposed upon their  
power by the Constitution, by its charter, or by

## **ATTACHMENT Q**

## ARTICLE XV BOARD OF PUBLIC UTILITIES

### Section 16.1 Definitions

(1) The term "public utilities" by way of description, but not as a limitation, shall include electric systems (and appurtenant steam heating apparatus and piping), gas systems, water systems, transit systems, and public communications systems (including all plants, apparatus, equipment, and distribution facilities related to any such system), or any other service or facility commonly considered to be a public utility or so declared to be by any statute, ordinance or court decision.

(2) The utilities now owned or hereafter acquired by the City shall be operated under the name "City Utilities of Springfield, Missouri."

### Section 16.2. Composition of the board

(1) All such public utilities now owned or which may in the future be acquired shall be controlled and operated by a board known as the board of public utilities.

(2) Such board shall consist of eleven persons appointed as hereinafter provided for terms of three years and who shall serve until their successors are appointed and qualified; however, no person shall be appointed for more than two consecutive three year terms.

(3) The city manager shall be an ex officio member of such board, but shall not have any vote.

(4) Nine members of said board shall be residents of the City of Springfield, who have had business or professional experience and who shall have resided in the City at least two years immediately prior to their appointment.

Two members of the board shall live outside the City of Springfield; shall have had business or professional experience; and shall have been record subscribers to at least one of the public utilities (other than transit) owned by the City for at least two years next prior to their appointments which subscription shall be maintained during their terms in office.

Approved by vote of the people April 4, 1989.



#### **Section 16.3. Appointment of board**

Members of such board shall be nominated and appointed by a majority vote of the city council acting as a committee of the whole. Any vacancy shall be filled in the same manner.

#### **Section 16.4. Organization of the board**

Upon its first meeting after appointment, such board of public utilities shall organize by electing one of its members as chairman, one as vice-chairman, and another of its members, or the city clerk, as secretary, to serve for a term of one year. Such chairman, or in his absence, the vice-chairman, shall preside at the meetings of the board. The secretary or in his absence, an acting secretary elected by the board, shall attend such meetings and keep a record of all actions taken at the meeting. Such officer shall perform such other duties as the said board may from time to time specify. All records of the said board are hereby declared to be public records, and any person shall, at reasonable time and under such reasonable regulations as the board may determine, be permitted to examine the records. Five members of the board shall constitute a quorum for the transaction of business. All members of the said board shall serve without any compensation except the necessary expenses of their office; the expenses thereof to be paid out of the revenue of the utilities operated by the said board. If the board is required by the council to give bond, the cost of the same shall be paid out of the revenue of the utilities operated by such board.

#### **Section 16.5. Restrictions on the board**

Not more than six members of the said board shall belong to the same political party, and the administration of such board shall be in all respects entirely nonpartisan. No member of the said board shall, during his term of office thereon, be a candidate for office, nor shall he hold any other office, either school board, city, county, state, or federal during his official term; nor shall he be a member of any party organization or committee to further the candidacy of any person for municipal public office. Upon becoming a candidate for public office or accepting any of the offices aforesaid, during the term, he shall be deemed thereby to have immediately resigned as a member of the said board, and his membership shall be thereby ipso facto vacated.